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Local Counsel to Defendant Festo Didactic, Inc.

Gregory F. Hauser, Esquire
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Counsel to Defendant Festo Didactic Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE**

USI INTERNATIONAL INC.

Plaintiff,

vs.

FESTO DIDACTIC INC.,

Defendant.

CIVIL ACTION NO.: 3:15-CV-08451-MAS-TJB

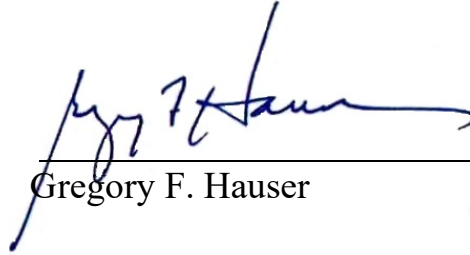
DECLARATION OF GREGORY F. HAUSER

GREGORY F. HAUSER declares as follows:

1. I am an attorney admitted to practice before the Courts of the State of New York and *pro hac vice* before this Court and a partner in the law firm of Wuersch & Gering, LLP.
2. I am lead counsel for Defendant Festo Didactic, Inc.
3. I make this declaration based on personal knowledge and the record in this action in opposition to Plaintiff's motion for leave to file a Second Amended Complaint.
4. Accompanying my declaration as Exhibit A is a true copy of excerpts of the deposition transcript of Jonathan Abbott, taken in this action on November 6, 2019.
5. Accompanying my declaration as Exhibit B is a true copy of excerpts of the deposition transcript of Dr. Nader-Iman Imani, taken in this action on November 15, 2019.
6. Accompanying my declaration as Exhibit C is a true copy of an email I sent counsel for Plaintiff on November 13, 2019.
7. Defendant has received from Plaintiff no information in discovery, whether in the form of an amended damages disclosure or of documents, supporting or otherwise relating to Plaintiff's new claim concerning the amount of the underlying contract and Plaintiff's damages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 5, 2019



Gregory F. Hauser

EXHIBIT A

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----x
USI INTERNATIONAL, INC.,

Plaintiff,

vs.

Civil Action No.

3:15-cv-08451 (MAS) (TJB)

FESTO DIDACTIC, INC.,

Defendant.
-----x

DEPOSITION OF JONATHAN ABBOTT

Orlando, Florida

Wednesday, November 6, 2019

Reported by:

DONALD R. DePEW, RPR, CRR, FPR

JOB NO. 171159

November 6, 2019

10:02 a.m.

Deposition of JONATHAN ABBOTT,
held at Air Force Agency for Modeling and
Simulation, 3051 Technology Parkway, Orlando,
Florida, before Donald R. DePew, a Registered
Professional Reporter, Certified Realtime
Reporter, Florida Professional Reporter, and
Notary Public of the State of Florida at Large.

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2 A P P E A R A N C E S:
3

LEWIS BAACH KAUFMANN MIDDLEMISS

4 Attorneys for Plaintiff

The Chrysler Building

5 405 Lexington Avenue

New York, New York 10174

6 BY: ERIKA LEVIN, ESQ.

DIANE CAMACHO, ESQ.

7
8
9 WUERSCH & GERING

10 Attorneys for Defendant

100 Wall Street

11 New York, New York 10005

BY: GREGORY HAUSER, ESQ.

12
13 THOMAS WILSON, Associate Counsel

14 Attorney for Witness

Naval Air Warfare Center

15 Training Systems Division

12211 Science Drive

16 Orlando, Florida 32826
17

ALSO PRESENT:

18 BURAK YAHSI, President, USI International
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1 Confidential - Jonathan Abbott

2 J O N A T H A N A B B O T T, called as a
3 witness, having been duly sworn by the Notary
4 Public, was examined and testified as follows:

5 MS. LEVIN: Erika Levin, LBKM, on
6 behalf of USI International, the plaintiff.

7 MS. CAMACHO: Diane Camacho, also with
8 LBKM and also on behalf of USI
9 International.

10 MR. YAHSI: Burak Yahsi, USI
11 International.

12 MR. HAUSER: Gregory Hauser, Wuersch &
13 Gering, for the defendant.

14 MR. WILSON: Thomas Wilson from the
15 Department of the Navy, Office of General
16 Counsel, here on behalf of the United States
17 Navy.

18 THE WITNESS: Jonathan Abbott,
19 contracts department, Naval air warfare
20 center, training systems division,
21 United States Navy.

22 MS. LEVIN: Thank you.

23 EXAMINATION BY

24 MS. LEVIN:

25 Q. So once again my name is Erika Levin.

1 Confidential - Jonathan Abbott

2 When did you move to Florida?

3 A. 1989.

4 Q. Oh, okay.

5 And Orlando area or --

6 A. Orlando, yes.

7 Q. And please describe your education
8 post high school.

9 A. I attended the University of Florida,
10 Gainesville, Florida, and got a bachelors in
11 finance.

12 Q. Okay. And please state your current
13 title.

14 A. Currently I am a contracting officer.

15 Q. With whom?

16 A. The United States Navy.

17 Q. Okay. And how long have you been in
18 that position?

19 A. It's three and a half years.

20 Q. Okay. And do you understand the
21 purpose of our deposition today?

22 A. Yes.

23 Q. Do you¹ recall being involved with
24 respect to the sale of training equipment for
25 the Oman Military Technical College?

1 Confidential - Jonathan Abbott

2 A. They are the customer.

3 Q. So with respect to the Military
4 Technical College in Oman what is your
5 familiarity with the entity?

6 A. That it is a training college, you
7 know, for the Oman defense department where
8 various training activities occur.

9 Q. And when were you first I guess made
10 aware of the transaction, FMS transaction,
11 relating to the Military Technical College?

12 A. When I came on board I believe in the
13 summer of 2014.

14 Q. Okay. And what were your
15 responsibilities with respect to the
16 transaction?

17 A. I was responsible for negotiating the
18 contract, the price of the contract, and setting
19 up the award document, and subsequent to
20 execution of the award document administration
21 post award.

22 Q. Do you recall when the U.S. Embassy
23 first contacted Lab-Volt in relation to the Oman
24 Military Technical College?

25 A. I do not know that.

1 Confidential - Jonathan Abbott

2 the program at that time.

3 Q. Oh, he passed away -- hold on.

4 You became involved in mid-2014,

5 correct?

6 A. Correct.

7 Q. When did Mr. Morgan pass away?

8 A. I believe in 2017, late 2016, 2017.

9 Q. And I thought you testified at the
10 very beginning that you'd been involved with
11 this contract post award administration?

12 A. I did post award administration. I
13 did not -- I am not currently doing post award
14 administration.

15 Q. Ah-ha. Until when were you involved
16 with post award administration?

17 A. I believe early 2016, if I can recall
18 correctly.

19 Q. So about a year and a half or so?

20 A. It sounds about right.

21 Q. Okay. In that time were there any
22 amendments to this contract adding additional
23 equipment?

24 A. Not adding additional equipment, no.

25 Q. Okay. To your knowledge after you

1 Confidential - Jonathan Abbott

2 left were there any adding additional training
3 equipment?

4 A. To my knowledge, no.

5 Q. If we look at Exhibit 39.

6 Do you have that?

7 A. Okay.

8 Q. Now do you see where it's talking
9 about Oman -- 2 percent of the service being
10 provided in Oman?

11 A. Okay.

12 Q. All right. But in fact service in
13 Oman wasn't the only component of the warranty
14 and after delivery service, was it?

15 A. Correct.

16 Q. And in fact there was anticipated that
17 part of the warranty costs would involve
18 equipment that had to be shipped back to Canada
19 to be repaired and then shipped back to Oman,
20 correct?

21 A. Correct.

22 Q. So some of the warranty was in fact
23 included in the 90 -- in this e-mail, the
24 95 percent Canadian effort, correct?

25 A. That's my understanding.

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C E R T I F I C A T E

STATE OF FLORIDA)

: ss.

COUNTY OF ORANGE)

I, DONALD R. DePEW, a Registered Professional Reporter, Certified Realtime Reporter, Florida Professional Reporter, and Notary Public within and for the State of Florida at Large, do hereby certify:

That JONATHAN ABBOTT, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2019.



DONALD R. DePEW, RPR, CRR, FPR

EXHIBIT B

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF NEW JERSEY

4 -----X

5 USI INTERNATIONAL, INC.,

6 Plaintiff,

7 v.

Civil Action No.

3:15-cv-08451

8 FESTO DIDACTIC INC.,

(MAS) (TJB)

9 Defendant.
10 -----X

11 DEPOSITION OF NADER-IMAN IMANI

12 New York, New York

13 Friday, November 15, 2019

14 10:13 a.m.
15
16
17
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20

Reported by:

21 LYNN VAN DEN HENDE

CRR, RMR, RPR, CSR-NY, CSR-CA, CSR-IL

22 JOB NO: 171890
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November 15, 2019
10:13 a.m.

Deposition of NADER-IMAN IMANI, held
at the offices of Wuersch & Gering, 100 Wall
Street, New York, New York, pursuant to
Notice, before Lynn Van Den Hende, Certified
Realtime Reporter, Registered Merit
Reporter, State of New York Certified
Shorthand Reporter, State of California
Certified Shorthand Reporter, State of
Illinois Certified Shorthand Reporter,
Registered Professional Reporter, and Notary
Public within and for the State of New York.

1

2 A P P E A R A N C E S:

3 FOR THE PLAINTIFF:

4 LEWIS BAACH KAUFMANN MIDDLEMISS

5 405 Lexington Avenue

6 New York, NY 10174

7 BY: ERIKA LEVIN, ESQ.

8 BY: DIANE CAMACHO, ESQ.

9 BY: ADAM KAUFMANN, ESQ.

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15 FOR THE DEFENDANT:

16 WUERSCH & GERING

17 100 Wall Street

18 New York, NY 10005

19 BY: GREGORY HAUSER, ESQ.

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21

22

23 ALSO PRESENT:

24 BURAK YAHSI

25

1 N. Imani

2 N A D E R - I M A N I M A N I,

3 called as a witness, having been duly
4 sworn by a Notary Public, was examined
5 and testified as follows:

6 MS. LEVIN: Erika Levin, LBKM,
7 on behalf of USI International.

8 MS. CAMACHO: Diane Camacho,
9 also LBKM, on behalf of USI
10 International.

11 MR. KAUFMANN: Adam Kaufmann,
12 also with LBKM, on behalf of USI.

13 MR. YAHSI: Burak Yahsi, USI
14 International. Thank you.

15 MR. HAUSER: And I'm Gregory
16 Hauser of Wuersch & Gering for the
17 defendant.

18 THE WITNESS: I'm Nader Imani,
19 Festo Didactic.

20 EXAMINATION

21 BY MS. LEVIN:

22 Q. So thank you, Mr. Imani or
23 Dr. Imani for being here today.

24 My name is Erika Levin. I'm an
25 attorney for USI, the plaintiff in this

1 N. Imani

2 EXAMINATION

3 BY MR. HAUSER:

4 Q. Dr. Imani, just to clear up a
5 few things, your current employer is Festo
6 Didactic S.E., correct?

7 A. Yes.

8 Q. Okay. Since the contract
9 between Festo Didactic, Inc. and the U.S.
10 Government was signed in October of 2014,
11 was all that equipment that was listed
12 delivered by Festo Didactic, Inc. to Oman?

13 A. Yes, the contract we signed in
14 2014 was delivered completely.

15 Q. And did the U.S. Government pay
16 for it?

17 A. Yes.

18 Q. Okay. And was there ever any
19 additional equipment added to that
20 contract?

21 A. No.

22 Q. So there was the roughly \$11
23 million and nothing -- for goods and
24 services and nothing more than that,
25 correct?

1 N. Imani

2 A. And that's it.

3 Q. Let's go back to Exhibit 4.

4 And looking at the page that's
5 labeled defendant 401, do you remember
6 that letter?

7 A. Yes.

8 Q. Do you see in the second line
9 there's a reference to offset funding for
10 the project?

11 A. Yes.

12 Q. Did this project end up having
13 offset funding?

14 A. No.

15 Q. Offset funding is distinct and
16 different from FMS funding, correct?

17 A. Completely.

18 Q. Okay. Let's take a look at
19 Exhibit 10.

20 Do you remember you were asked
21 before what LOA meant?

22 A. Yes.

23 Q. And you testified it meant
24 letter of acceptance?

25 A. Yes.

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2

C E R T I F I C A T E

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STATE OF NEW YORK)

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) :ss

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COUNTY OF NEW YORK)

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I, LYNN VAN DEN HENDE, a Certified
Shorthand Reporter and Notary Public, within and
for the State of New York, do hereby certify:

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14

That NADER-IMAN IMANI, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by such
witness.

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I further certify that I am not
related to any of the parties to this action by
blood or marriage and that I am in no way
interested in the outcome of this matter.

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24

LYNN VAN DEN HENDE

25

CRR, RMR, RPR, CSR-NY, CSR-CA, CSR-IL

EXHIBIT C

Gregory F. Hauser

From: Gregory F. Hauser
Sent: Wednesday, November 13, 2019 12:36 PM
To: 'Erika Levin'
Cc: Lauren Skala; Mackenna White; Diane Camacho
Subject: RE: Navy Depositions

Importance: High

Two matters left over from last week:

1. At one of the depositions, you marked a document labeled Duggan ####. Was there a Duggan production? If so, I don't have it. Please clarify this.
2. You have repeatedly mentioned evidence of another transaction. None has ever been produced. It would clearly be within your continuing duty to produce and should have been produced when obtained.

WUERSCH & GERING

Gregory F. Hauser | Partner
Wuersch & Gering LLP | 100 Wall Street, 10th Fl. | New York, NY 10005
212-509-4717 (direct) | 212-509-5050 (firm)
gregory.hauser@wg-law.com | www.wg-law.com

From: Erika Levin [mailto:Erika.Levin@LBKMLAW.com]
Sent: Wednesday, November 13, 2019 11:07 AM
To: Gregory F. Hauser <gregory.hauser@wg-law.com>
Cc: Lauren Skala <Lauren.Skala@LBKMLAW.com>; Mackenna White <Mackenna.White@LBKMLAW.com>; Diane Camacho <Diane.Camacho@LBKMLAW.com>
Subject: RE: Navy Depositions

Here are the attendees from our side: Erika Levin, Adam Kaufmann, Diane Camacho, and Burak Yahsi. Lauren will provide the name of the court reporter.

Please confirm your availability for depositions on November 21, 22 and/or December 4, 5, 6 so that we can finalize the schedule with the deponents.

Let's plan on starting at 10am on Friday.

Thank you,

Erika

Erika Levin

Lewis Baach Kaufmann Middlemiss PLLC